Mock Trial

- SCENE 1
 2nd Date for Oral Argument Explanatory Session
- Procedures thereafter
- SCENE 2
 3rd Date for Oral Argument Rendering of Judgement

SCENE 1

2nd Date for Oral Argument

Sep. 20, 2021

-Explanatory Session -

2

O Procedures to be conducted on this date

Statement of the Outcome of Preparatory Proceedings



Confirmation of the clarified issues in dispute

Explanatory Session



Final presentation for summarizing and orally explaining allegations of both parties

Participation of Technical Advisors



Explanation on the specialized, technical matters in dispute

Confirmation of the clarified issues in dispute (1)

Whether or not the manufacture and sale of the Defendant's Styluses by

the defendant constitute indirect infringement

- Exclusive use type of indirect infringement (Patent Act 101(i))
- Multi-use but indispensable type of indirect infringement (Parent Act 101(ii))



Whether or not the manufacture and sale of the Defendant's Position

Detectors [Form α] by the defendant constitute indirect infringement

Multi-use but indispensable type of indirect infringement (Parent Act 101(ii))

Necessity of injunction



falls within the

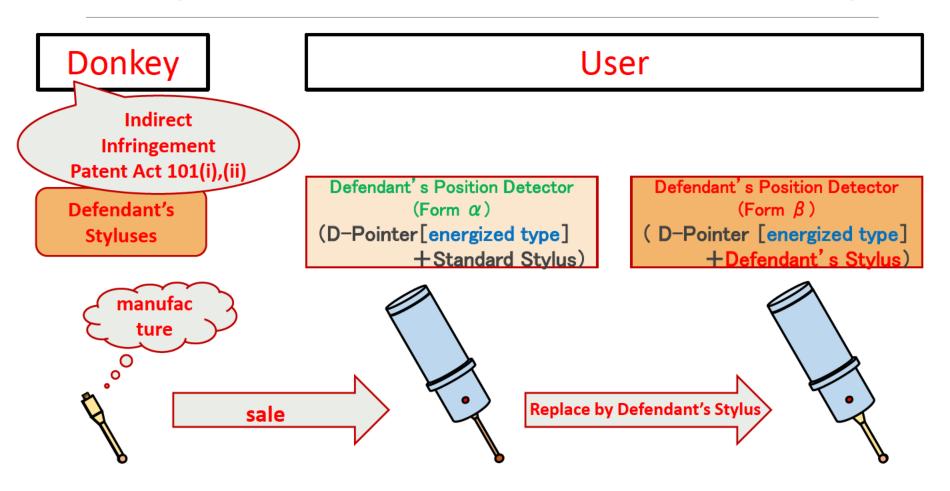
technical scope

Defendant's

Stylus

Confirmation of the clarified issues in dispute (2)

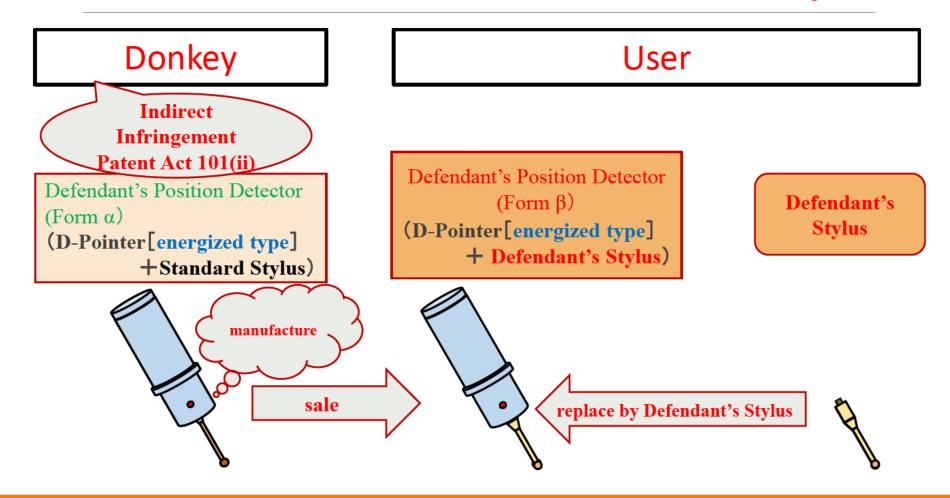
Plaintiff's allegation⇒manufacture and sale of Defendant's Styluses =indirect infringement



Confirmation of the clarified issues in dispute (3)

Plaintiff's allegation \Rightarrow manufacture and sale of Defendant's Position Detectors (Form α)

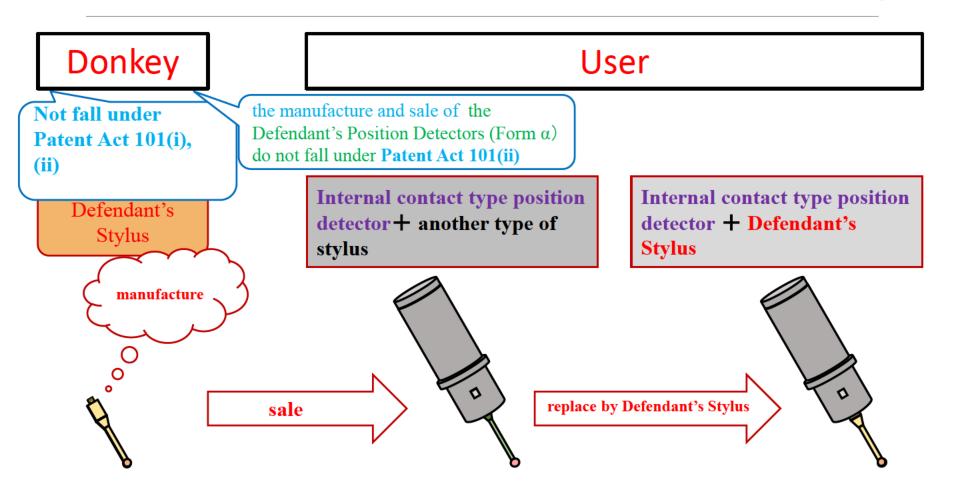
= indirect infringement



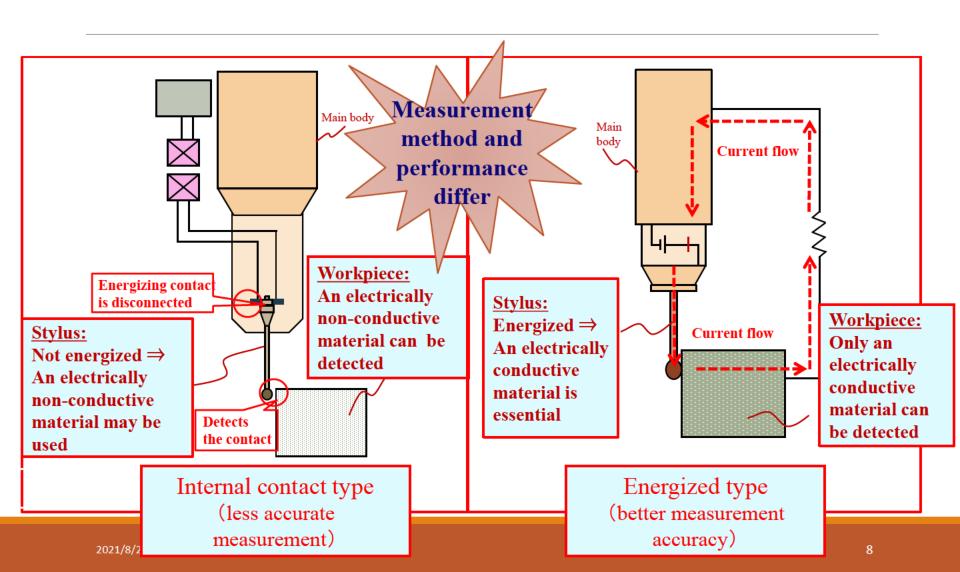
Confirmation of the clarified issues in dispute (4)

Defendant's allegation \Rightarrow **Defendant's Stylus**, Defendant's Position Detector (Form α)=

Not constitute indirect infringement



1. Presence/absence of indirect infringement of stylus (Plaintiff's allegations ①: Patent Act, Article 101 (1))



1. Presence/absence of indirect infringement of stylus (Plaintiff's allegations ①: Patent Act, Article 101 (1))

□Present invention and measurement method

The present invention has adopted a configuration where a contacting portion is made from cemented carbide, which is a non-magnetic material. This is to prevent measurement errors and other problems, which are caused by choosing an "energized type", for the stylus becomes magnetized over the course of being repeatedly energized.

□Economical, commercial and practical application

When adopting an internal contact type, users would not use the Defendant's Stylus, which has a contacting portion made from costly non-magnetic, cemented carbide, for the problem that the stylus becoming magnetized by being repeatedly energized does not arise. (Contacting portions made of hard material are common. In using an internal contact type, the users would use a stylus having a contact portion made from economical material).

Using the Defendant's Stylus with an internal contact type position detector is not an economical, commercial or practical application.

□ Conclusion

The manufacture and sale of the Defendant's Stylus constitutes indirect infringement of a dedicated product type.

1. Presence/absence of indirect infringement of stylus (Plaintiff's allegations ②: Patent Act, Article 101 (2), (i))

"indispensable for the resolution of the problem"

The problem to be solved by the Present Invention: the prevention of measurement errors arising in a positon detector that adopts the energized type measuring method, due to the stylus becoming magnetic or arising from the wear and deformation of the stylus caused by repeated contact and separation between the stylus and workpieces. (Specification of the Present Patent [006]-[009])

As means to solve this problem, the Present Invention adopts a structure "made of a non-magnetic material containing tungsten carbide and a nickel binder" in Feature B.

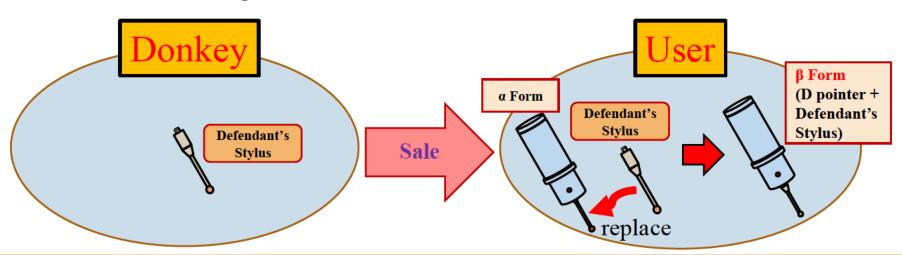
The Defendant's Stylus, containing non-magnetic material A, which has the material stipulated in Feature B, should be considered as being "indispensable for the resolution of the problem".

1. Presence/absence of indirect infringement of stylus (Plaintiff's allegations 2: Patent Act, Article 101 (2), (ii))

■Defendant's subjective

The Defendant's Stylus is used with the Defendant's Position Detector, and the users who purchase the Defendant's Stylus attach it to the Defendant's Position Detector.

Although recognizing the users' manner of use and receiving the Demand Letter, the Defendant continues to manufacture and sell the Defendant's Stylus. The Defendant is aware that "this invention is a patented invention" and the Defendant's Stylus is "used for the working of the invention."



1. Presence/absence of indirect infringement of stylus (Plaintiff's allegations 2: Patent Act, Article 101 (2), (ii))

"a product widely distributed within Japan"

The Stylus manufactured by the Defendant is a "custom-made product", which can only be attached to the position detector manufactured by the Defendant.

Conclusion

Manufacture and sale of the Defendant's Stylus constitutes indirect infringement of a non-dedicated product type.

1. Presence/absence of indirect infringement of stylus (Defendant's allegations ①: Patent Act, Article 101 (1))

Economical, commercial and practical application

✓ The Defendant's Stylus is compatible with the internal contact type position detector manufactured by the defendant Usable by equipment with the internal contact type Donkey Jser position detector !!! Internal contact type position The Internal contact type position detector + another type of detector + the Defendant's Defendant's Stylus stylus Stylus Replacement Sale to the Defendant's Styl

1. Presence/absence of indirect infringement of stylus (Defendant's allegations ①: Patent Act, Article 101 (1))

- ✓ The cemented carbide as raw material of the Defendant's stylus has excellent abrasion resistance and corrosion resistance. There is a necessity to use a stylus made of cemented carbide even in the internal contact type position detector because it has the advantage of preventing measurement errors resulting from wear and deformation caused by repeated contact with a workpiece that is very hard.
- ✓ The Defendant's Stylus has an economical, commercial or practical use application as a stylus for an internal contact type position detector
- ✓ The Defendant's stylus does not fall under a "product to be used exclusively for the producing of" the Defendant's Position Detector (item (i), Article 101 of the Patent Act)

1. Presence/absence of indirect infringement of stylus (Defendant's allegations 2: Patent Act, Article 101 (2))

"a product widely distributed within Japan"

✓ The Defendant's Stylus is a standard product and a popular product "widely distributed within Japan" (quotation from item (ii), Article 101 of the Patent Act).

1

(Reasons)

- ✓ A stylus is a tool with a tip that comes into contact with an object, and has been widely used by attaching it to a position detector in the field of detecting the position of an object.
- ✓ Like any other styluses, the Defendant's Stylus is not different from the conventional ones in that it is a product that is attached to a position detector and has the function of contacting an object for position detection.

1. Presence/absence of indirect infringement of stylus (Defendant's allegations 2: Patent Act, Article 101 (2))

Defendant's subjective

✓ It cannot be said that the defendant manufactured and sold the Defendant's Styluses knowing that they were "used for the working of the invention."

The defendant is selling the Defendant's Position Detectors, with the SUS styluses (the Standard Styluses) attached as the standard equipment to the Defendant's Position Detectors.

(D-Pointer + the Standard Stylus)

The Defendant does not sell the Defendant's Stylus in a way that it attaches to the Defendant's Position Detectors!!!

1. Presence/absence of indirect infringement of stylus (Defendant's allegations 2: Patent Act, Article 101 (2))

- ✓ The defendant does not know exactly in how many cases, or to what extent, the Defendant's Styluses are attached to and used with the Defendant's Position Detectors.
- ✓ The Defendant does not sell the Defendant's Styluses "knowing" that they were used for the working of the invention.

2. Presence/absence of indirect infringement of position detector (Plaintiff's allegations)

"indispensable for the resolution of the problem"

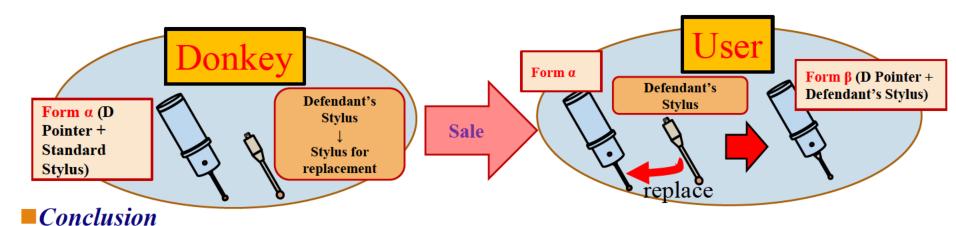
To solve the problem by the Present Invention, both adopting the energized type measurement method of the position detector and making the stylus of a non-magnetic material are indispensable.

In Form β , the Defendant's Position Detector, which is a part of the energized type measurement method, is also an article that is "indispensable for the resolution of the problem" by the Present Invention.

2. Presence/absence of indirect infringement of position detector (Plaintiff's allegations)

■Defendant's subjective

The Defendant's Stylus is sold as "a replacement stylus" for the Defendant's Position Detector. The Defendant manufactures and sells the Defendant's Position Detector being aware that the said position detector is used in Form β , in other words, "used for the working of the invention".



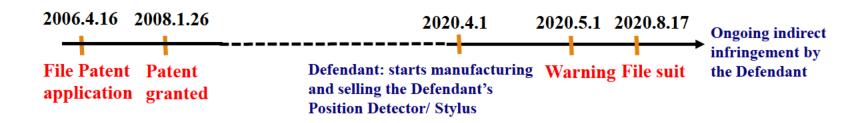
The manufacture and sale of the Defendant's Position Detector constitutes indirect infringement of a non-dedicated product type.

3. Necessity of injunction (Plaintiff's allegations)

■ Necessity of injunction

The Defendant started selling the Defendant's Stylus and Position Detector at the same time long after the registration of the patent, and still continues indirect infringement even after receiving a warning from the Plaintiff.

Injunction against the Defendant's manufacture and sale is necessary in order to stop and prevent infringement of the Plaintiff's Patent Right.



2. Presence/absence of indirect infringement of position detector

(Defendant's allegations)

"indispensable for the resolution of the problem"

The Defendant's Position Detector is not an article "indispensable for the resolution of the problem" by the Present Invention (item (ii), Article 101 of the Patent Act).

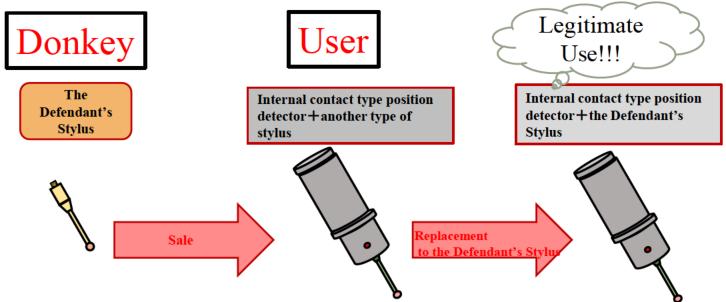
(Reasons)

- ✓ The Defendant's Position Detectors themselves do not prevent measurement error caused due to the stylus wear, deformation, or magnetization caused by repeated contact with and separation from workpieces and the like.
- The characteristic component that directly brings about the unique structure that characterizes the characteristic technical means of the Present Invention is the Defendant's Stylus, and not the Defendant's Position Detectors.

3. Necessity of injunction

(Defendant's allegations)

- (If, indirect infringement is found) Plaintiff's demand for injunction against the manufacture and sale of the Defendant's Styluses and the Defendant's Position Detectors should not be granted.
- There is the legitimate use that the Defendant's Styluses are attached to internal contact type position detectors



There is no reason to restrict the manufacture and sale of the Defendant's Position Detectors that merely have a publicly-known structure.

O Q and A Session

 Question 1— Using the Defendant's Stylus for an internal contact type position detector

O Q and A Session

- Question 1— Using the Defendant's Stylus for an internal contact type position detector
- Question 2 Relationship between an energized type position detector and demagnetization of a stylus

O Procedure thereafter

Date for Settlement Sep. 27, 2021

Consultation for Settlement

Termination of procedure for Settlement

SCENE 2

3rd Date for Oral Argument

October 20, 2021

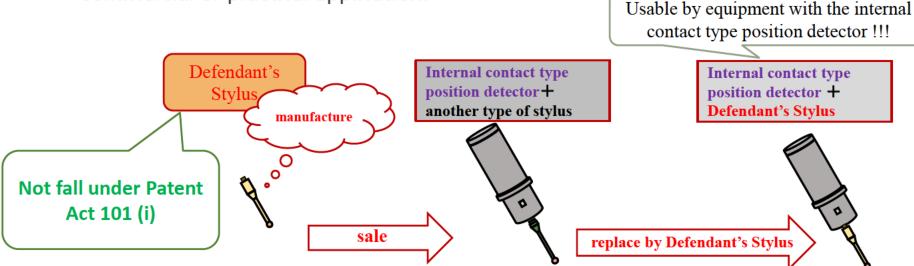
-Rendering of Judgement-

Rendering of Judgement

- Main Text
- The defendant shall not manufacture or sell the Defendant's Styluses.
- 2. The remaining parts of the plaintiff's demand are dismissed with prejudice on the merits.
- 3. The court costs shall be divided into two equal parts, with the defendant to bear one half and the plaintiff to bear the other half.
- 4. This judgment may be provisionally enforced as far as paragraph 1 is concerned.

(Presence/absence of Indirect Infringement as to stylus)

 Using by attaching the Defendant's Stylus to the internal contact type position detector has the effect of preventing deterioration of position detection accuracy due to wear or deformation of the contacting portion. Therefore, it shall not to be determined that the use in such a way is not economical, commercial or practical application.



(Presence/absence of Indirect Infringement as to stylus)

- The Defendant's Stylus is a specially designed product compatible exclusively with the position detector manufactured by the defendant. Therefore, the Defendant's Stylus does not fall under "those widely distributed within Japan."
- The Defendant's Stylus falls under a product "indispensable for the resolution of the problem by the Present Invention.
- The defendant was notified by the plaintiff and is found to have become aware that it is highly probable that the Defendant's Stylus is used for the working of the Present Invention.

 Defendant'

(Presence/absence of Indirect Infringement as to position detector (Form α))

The Present Invention adopts "the structure that, in an energized type position detector, a contacting portion of the stylus is made of a non-magnetic material containing tungsten carbide and a nickel binder".
On the other hand, the main body of the Defendant's Position
Detector is an independent component that differs from the
Defendant's Stylus adopting the structure described above. Therefore, the main body shall not be an article "indispensable for the resolution of the problem" by the Present Invention.
Defendant's Position

Not fall under Patent Act 101 (ii) Detector (Form α)



(Necessity of injunction)

Present circumstances show it is highly probable that acts such as assigning the Defendant's Styluses may induce infringement of the Plaintiff's Patent Right. In light of this fact, the necessity of injunction against the manufacture and sale of the Defendant's Styluses shall be recognized for the purpose of stopping and preventing infringement of the Plaintiff's Patent Right.

Necessary to injunct the manufacture and sale

Thank you

